

## ARGUMENTS/REMARKS

Applicants would like to thank the examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and amended as necessary to more clearly and particularly describe and claim the subject matter which applicants regard as the invention.

Applicant requests a personal interview prior to the issuance of the next Office action. Applicant attempted to get a personal interview in this case prior to filing this response, but the current examiner had resigned and the case had not yet been assigned to a new examiner.

Claims 1-51 remain in this application.

Claims 1-11, 14-34, and 38-51 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kraftson et al. (U.S. 6,151,581) in view of Joao (U.S. 6,283,761), and in view of Siegrist, Jr. *et al.* (U.S. 5,652,842) and in view of Official Notice. Claims 12-13 and 37-38 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kraftson, Joao, and Siegrist, in further view of Plantec *et al.*, (U.S. 6,826,540). For the following reasons, the rejections are respectfully traversed.

Claim 1 recites a survey system that includes the feature that

said system automatically displays survey results to each survey participant utilizing historical survey data, said displayed analyzed feedback formatted in a *custom manner based on whether the current survey participant is a customer, or is an employee or a manager*

(emphasis added). None of the references teach or suggest that historical survey data is used to display survey results to the survey participant, where the material is formatted in a custom manner based on whether the participant is a customer or an employee or a manager. The Examiner cites Joao at col. 4, lines 27-33 and col. 19 at lines 7-11 and col. 20 at lines 21-27 as providing such a teaching. However, a review of these sections finds no such teachings, either explicitly or implicitly. Thus, claim 1 is patentable over the references. Claims 14, 29, 30, 31, and 34 also include limitations that are similar (but perhaps of a different scope) to those cited above for

claim 1, and thus they are also patentable over the references, as are claims 2-11, and 15-28, which depend, directly or indirectly, upon one of claims 1 and 14.

Furthermore, the Examiner argues that various “non-functional descriptive material” will not distinguish the claimed invention, citing *In re Nagi* 367 F.3d 1336, 1339, 70 USPQ2d 1962, 1864 (Fed. Cir. 2004) and *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983). This is not a proper rejection. The Examiner argues that “nonfunctional descriptive material” are features that cannot alter how a machine functions (i.e., does not reconfigure the computer). The Examiner argues that “practice data, historical performance data, pathophysiologic normative data, etc.) will not distinguish the claimed invention from the prior art in terms of patentability.

The Examiner ignores the fact that such data does, indeed, alter how a computer using the routines of the invention functions, because these functions must be programmed into the software and databases that the processor utilizes to execute these functions. For example, claim 1 recites:

a customer viewpoint module for providing software scripts to said survey communication system for surveying survey participants who are customers using a drill-down method,, said survey data obtained from the customers including patient viewpoint data

similarly, claim 12 recites

a patient viewpoint program for providing patient viewpoint survey scripts to said external surveying system for obtaining participant viewpoint data from the patient

and then the claim recite that this data is analyzed and presented to the user in a formatted manner. Obviously, these specific scripts must be properly programmed to provide computer functionality to provide such data, and thus this data rejected by the Examiner as being merely “descriptive” clearly is *not* merely descriptive, but requires that the computer perform specific functions in order to support it. Scripts for obtaining specific data are clearly functional in nature, and thus cannot be called “non-functional descriptive material”. For example, in order to obtain the desired data from the survey participated, specific questions must be formatted and presented to the user. Furthermore, the collected data must be analyzed in a manner consistent with the data, and further formatted into a form for presenting to a user. Again, this

will depend on the type of data collected, and thus has specific impacts on how the computer will function.

The Examiner cites *In re Nagi*, 367 F.3d 1336, (Fed. Cir.2004) (combining printed instructions and an old product into a kit will not render the claimed invention nonobvious even if the instructions detail a new use for the product) and *In re Gulack*, 703 F.2d 1381,1385 (Fed. Cir. 1983), neither of which are relevant to computer-related inventions. Furthermore, the Examiner's arguments are not consistent with the cited cases. In fact, the cases don't even support the propositions for which the Examiner cites them.

First, the cases do not anywhere use the term "descriptive material". The term "printed matter" is used, and it is assumed that this is what the Examiner is referring to. But even if that is what the Examiner meant, the cases do not support any rejection of the claims. For example, *Gulack* states that "[d]ifferences between an invention and the prior art cited against it cannot be ignored merely because those differences reside in the content of the printed matter [and] the board cannot dissect a claim, excise the printed matter from it, and declare the remaining portion of the mutilated claim to be unpatentable [because the] claim must be read as a whole" (see *Gulack* at 1385). The case further states that a "printed matter rejection" under §103 "stands on questionable legal and logical footing" because the "printed matter rejection is based on case law antedating the 1952 patent act (see note 4). Similarly, *Nagi* finds that "the printed matter in no way depends on the kit, and the kit does not depend on the printed matter. All that the printed matter does is teach a new use for an existing product" (*Nagi* at 1339) , leading to a clear finding that the printed matter was merely trying to force an "intended use" onto an existing apparatus without any structural changes.

Applicant cannot understand how the Examiner can call the cited claim limitations mere "descriptive material" (and neither can the limitations be considered mere "printed matter"), as the claim language clearly relates to functional issues that will impact the function of the device, as disused above. The applicant is not merely providing a new use for an existing product, but provides functional features that must be implemented into the apparatus. Thus, the Examiner is clearly incorrect in merely dismissing the claim language as being non-limiting. Thus, these rejections on these grounds are not proper.

Accordingly, claim 1 and claim 12 are patentable over the references, along with the claims dependent thereon. Any remaining claims are patentable at least for one of the reasons discussed above, or by nature of their dependency upon one of the above discussed claims.

Finally, the Examiner's responses to applicant's arguments do not address the issues discussed above. The Examiner is cited generalized statements found in the references that do not teach the cited claim limitations. It is improper for the Examiner to take a generalized teaching and infer specifics from that teaching that are not inherent, but merely speculative.

In consideration of the foregoing analysis, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. QUAL-33035US1.

Respectfully submitted,  
PEARNE & GORDON, LLP

Date: February 6, 2008

By: \_\_\_\_\_ / Robert F. Bodi /

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